

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFERY DONELL ROBINSON,

Plaintiff,

v.

C. CRYER, L. MERRITT,

Defendants.

No. 1:20cv980-NONE-HBK

FINDINGS AND RECOMMENDATIONS THAT  
THIS CASE BE DISMISSED, WITHOUT  
PREJUDICE<sup>1</sup>

OBJECTIONS DUE WITHIN FOURTEEN DAYS

I. FACTS AND BACKGROUND

Plaintiff Jeffery Donell Robinson is a current or former state prisoner proceeding *pro se* on his civil rights complaint filed under 42 U.S.C. § 1983. Doc. No. 1. On December 3, 2020 and again on February 9, 2020, mail from the Court delivered to plaintiff at his only address of record was returned as undeliverable. *See* docket. Plaintiff's address change was due by February 11, 2020. As of the date of this Findings and Recommendation, plaintiff has neither filed a notice of change of address nor contacted the court.

II. APPLICABLE LAW

This court's Local Rules require litigants to keep the court apprised of their current

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<sup>1</sup> This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Ca. 2019).

1 address, specifically providing:

2 “[a] party appearing *in propria persona* shall keep the Court and  
 3 opposing parties advised as to his or her current address. If mail  
 4 directed to a plaintiff *in propria persona* by the Clerk is returned by  
 5 the U.S. Postal Service, and if such plaintiff fails to notify the Court  
 and opposing parties within sixty-three (63) days thereafter of a  
 current address, the Court may dismiss the action without prejudice  
 for failure to prosecute.”

6 E.D. Cal. Loc. R. 183(b) (2019). Federal Rule of Civil Procedure 41(b) permits the court to  
 7 involuntarily dismiss an action when a litigant fails to prosecute an action or fails to comply with  
 8 other Rules or with a court order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v.*  
 9 *Lichtenegger*, 913 F.3d 884, 889 (9th Cir. 2019) (citations omitted). Local Rule 110 similarly  
 10 permits the court to impose sanctions on a party who fails to comply with the court’s Rules or any  
 11 order of court.

12 Before dismissing an action under Fed. R. Civ. P. 41, the court *must* consider: (1) the  
 13 public interest in expeditious resolution of litigation; (2) the court’s need to manage a docket; (3)  
 14 the risk of prejudice to defendant; (4) public policy favoring disposition on the merits; (5) the  
 15 availability of less drastic sanctions. *See Applied Underwriters*, 913 F.3d at 889 (noting court  
 16 that these five factors “must” be analyzed before a Rule 41 involuntarily dismissal) (emphasis  
 17 added); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (reviewing five factors  
 18 and independently reviewing the record because district court did not make finding as to each);  
 19 *but see Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000) (listing the same, but  
 20 noting the court *need not* make explicit findings as to each) (emphasis added); *Ferdik v. Bonzelet*,  
 21 963 F.2d 1258, 1260 (9th Cir. 1992) (affirming dismissal of *pro se* 1983 action when plaintiff did  
 22 not amend caption to remove “et al” as the court directed and reiterating that an explicit finding of  
 23 each factor is not required by the district court).

## 24 II. ANALYSIS

25 The undersigned considers each of the above-stated factors and concludes dismissal is  
 26 warranted in this case. The expeditious resolution of litigation is deemed to be in the public  
 27 interest, satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983, 990-91 (9th Cir.  
 28 1999). Turning to the second factor, the court’s need to efficiently manage its docket cannot be

1 overstated. This court has “one of the heaviest caseloads in the nation,” and due to unfilled  
2 judicial vacancies, which is further exacerbated by the Covid-19 pandemic, operates under a  
3 declared judicial emergency. *See* Amended Standing Order in Light of Ongoing Judicial  
4 Emergency in the Eastern District of California. The court’s time is better spent on its other  
5 matters than needlessly consumed managing a case with a recalcitrant litigant. Indeed, “trial  
6 courts do not have time to waste on multiple failures by aspiring litigants to follow the rules and  
7 requirements of our courts.” *Pagtalunan v. Galaza*, 291 F.3d 639, 644 (9th Cir. 2002) (Trott, J.,  
8 concurring in affirmance of district court’s involuntary dismissal with prejudice of habeas petition  
9 where petitioner failed to timely respond to court order and noting “the weight of the docket-  
10 managing factor depends upon the size and load of the docket, and those in the best position to  
11 know what that is are our beleaguered trial judges.”). Delays inevitably have the inherent risk  
12 that evidence will become stale or witnesses’ memories will fade or be unavailable and can  
13 prejudice a defendant, thereby satisfying the third factor. *See Sibron v. New York*, 392 U.S. 40,  
14 57 (1968). Finally a less drastic remedies in lieu of dismissal, such as, directing plaintiff to  
15 submit an updated address, or an order to show cause why the case should not be dismissed for  
16 failure to comply with Local Rules would be an act of futility because the order would be  
17 returned without delivery. Additionally, the instant dismissal is a dismissal *without* prejudice,  
18 which is a lesser sanction than a dismissal with prejudice, thereby addressing the fifth factor.

19 Two separate orders from the court have been returned as undeliverable. And contrary to  
20 Local Rule 183(b), more than 63 days have passed since mail was returned as undeliverable and  
21 plaintiff has not updated his mailing address or otherwise contacted the court. After considering  
22 the factors set forth *supra* and binding case law, the undersigned recommends dismissal, without  
23 prejudice, under Fed. R. Civ. P. 41 and Local Rules 110 and 183(b).

24 Accordingly, it is RECOMMENDED:

- 25 1. This case be dismissed without prejudice.
- 26 2. The Clerk of Court be directed to terminate any pending motions/deadlines and close  
27 this case.

NOTICE TO PARTIES

These findings and recommendations will be submitted to the United States district judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, a party may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: March 5, 2021

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE